Rowland Evans and Robert Novak

Kleindienst's Clouded Future

A backstairs struggle at the White House with possibly serious repercussions on the 1972 presidential election has now broken out over the future status of Deputy Attorney General Richard G. Kleindienst, with the anti-Kleindienst faction now holding a clear edge.

Boiled down, the question is whether President Nixon should risk a mean Senate confirmation fight and nominate Kleindienst as Attorney General in January. Attorney General John N. Mitchell and Mr. Nixon have now privately reached solid agreement that Mitchell will leave in early January to take active leadership of the Nixon re-election campaign.

That agreement between the President and Mitchell by itself represents a concession to political reality. There was serious talk several weeks ago that, to avoid the potentially messy question of Mitchell's successor at Justice, he would stay on as Attorney General until well into next spring, running the President's campaign from his hip pocket in his panelled office at the Justice Department.

UNDER that arrangement, with Mitchell's departure long delayed, Kleindienst might have been given Mitchell's job with the title of "acting" Attorney General, thus avoiding either a Senate confirmation battle or a humiliation to Kleindienst by the appointment of someone else. There is ample precedent for long tenures at Justice as "acting" boss, with Nicholas de B. Katzenbach holding the modern record of almost six months.

But Mitchell rejected that untidy solution. With the New Hampshire primary only a little more than five months away, party politicians around the country have been clamoring for him to take command of the plush offices of the Nixon campaign headquarters one block from the White House (officially styled "The Committee for the Re-election of the President").

Accordingly, with Mitchell's departure from Justice now set for early January, the Kleindienst problem has suddenly moved off the back burner and powerful anti-Kliendienst lobbies are beginning to work on both Mitchell and the White House, led by the moderate NAACP.

Thus, Clarence Mitchell, who runs the NAACP's Washington office and has close ties to liberal Republican senators, blames Kleindienst more than Mitchell or Mr. Nixon for the President's two Supreme Court fiascos: the nominations of Clement Haynsworth and G. Harrold Carswell, both rejected by the Senate.

Perhaps more to the point, Clarence Mitchell and the NAACP claim that Kleindienst personally vetoed New Jersey Republican Sen. Clifford P. Case's campaign to win a seat on the Third Circuit Court of Appeals for Clarence C. Ferguson, former dean of the law school at Howard University. Ferguson would have replaced another Negro, retiring Judge William H. Hastie, last spring.

Likewise, Kleindienst has run afoul of powerful newspaper and television executives, partly as a result of his actions during the bitter litigation over publication of the Pentagon Papers.

Such implacable opponents of Kleindienst have allies in Congress for entirely non-ideological reasons, based on nothing more than Kleindienst's power to make or withhold recommendations of all federal judgeships. A stickler for form, Kleindienst has leaned heavily on the recommendations of local bar associations, only to find himself on the receiving end of outraged senators whose own judicial preferences have been overriden.

TO THIS active opposition must be added presidential advisers who have no specific grievance against Kleindienst but who fear the political impact of an all-out confirmation fight on the eve of the President's re-election campaign. With one of the two or three highest jobs in the federal government about to open up, they want Mr. Nixon to milk the appointment for every political advantage he can find in it.

As of today, these advisers have a clear edge, and Mitchell, whose opinion may well be the controlling one, seems to be leaning that way too. That poses the strong possibility that Mr. Nixon will pass up Kleindienst in still another affront to his own right wing on the theory that the right has nowhere else to go.

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